

803 CMR 6.00: INDIVIDUAL RIGHTS, NOTIFICATION, INSPECTION

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6.01: Notice to Individuals

Upon sentencing of a person, following his/her conviction of any crime in the Commonwealth, the person shall be informed by the Probation department on a form provided by the CHSB, that:

- (1) he/she will now have a criminal record;
 - (2) that the public shall have access to this criminal record information, under certain specified conditions;
 - (3) that the convicted person has certain enumerated rights pertaining to this record information pursuant to M.G.L. c. 6, §§ 167 through 178.
- This form shall be drafted by the Board and provided to probation departments.

6.02: Release of CORI to Individuals

- (1) Each individual shall have the right to inspect and if practicable copy CORI relating to him or her in accordance with M.G.L. c. 6, § 175 and 803 CMR 6.00.
- (2) It is unlawful for a person to request or require another person to provide a copy of his criminal record except as certified by the CHSB or as specifically provided in 803 CMR 6.00.

6.03: Inspection of CORI in Manual Systems

Agencies at which criminal offender records are sought to be inspected shall prescribe reasonable hours and places of inspection, and shall impose such additional restrictions as may be approved by the board, including fingerprinting, as are reasonably necessary both to assure the record's security and to verify the identities of those who seek to inspect them.

6.04: Inspection of CORI in CJIS

CORI maintained in CJIS shall be available for inspection by the individual to whom it refers. Such requests shall be made in writing to the offices of the Criminal History Systems Board at 200 Arlington Street, Suite 2200, Chelsea, MA 02150, by providing a self-addressed, stamped envelope, and the following information: subject's full name, date of birth, social security number and parents' full names, including mother's maiden name. The CHSB may designate other sites for in person access to CORI on CJIS.

6.05: Copies of CORI and Documents Indicating the Absence of a Record

- (1) An individual shall have a right to receive, if practicable, a computer printout or a photocopy of CORI, including personal identifiers, referring to him /her.
- (2) If no CORI referring to the requesting individual can be found in the criminal justice agency's files, then such agency shall disclose this fact to the individual, in writing if requested.
- (3) In order for any individual, other than the individual named in the CORI, to inspect and or copy CORI under 803 CMR 6.05, all requirements of 803 CMR 6.06 must be met.
- (4) An agency holding CORI may impose a reasonable charge for copying services, not to exceed its usual charges to the public for such services, or the actual cost of such copying, whichever is less.
- (5) An individual may make and retain a written summary or notes of the CORI reviewed and he /she may take with him /her such summary of notes.

6.06: Authorization of Third Parties to Inspect and Copy CORI

- (1) An individual named in CORI may give his/her informed written authorization to third parties, including but not limited to attorneys, family members, and persons or agencies furthering the individuals's health or rehabilitation, to inspect and copy CORI pertaining to that individual. A third party so authorized may inspect and copy CORI in accordance with 803 CMR 6.05 by presenting such authorization and satisfactory identification to the agency holding the CORI. Where the individual is unable, due to a physical or mental incapacity, to give such informed written authorization, a criminal justice agency may disseminate CORI necessary for treatment purposes or for notifying families of the physical or mental health of an individual without such authorization. This provision shall not apply to consultants and contractors under 803 CMR 3.02(3).
- (2) An attorney authorized as a third party may further designate, in writing, an agent to act on his/her behalf in inspecting or copying an individual's CORI. If such agent is not himself/herself an attorney, the attorney shall provide, in addition a statement indicating that the agent is acting under the attorney's supervision.

(3) If the third party is either presently or has been within the last five years a correctional inmate or a parolee, such access shall be permitted only upon approval of the agency holding the CORI.

(4) A third party shall be prohibited from making any further dissemination of such CORI, except to the individual who has given such authorization. Upon disseminating CORI pursuant to 803 CMR 6.06, criminal justice agencies shall provide authorized parties with written notice of this prohibition and of the statutory penalties for improper dissemination of CORI.

(5) Where a criminal justice agency has reason to suspect the bona fide basis or authenticity of a third party authorization, the agency may refuse to allow the party purportedly authorized to inspect or copy CORI. Such a situation may arise where the agency suspects that the authorization has been coerced, or given for an unlawful purpose. When refusing a request to inspect and copy CORI on this basis, the agency shall notify the individual to whom the CORI pertains of such refusal and of the right to petition the CHSB for review of such refusal.

(6) Agencies shall implement 803 CMR in a manner consistent with the provisions of M.G.L. c. 151B, § 4 restricting an employer's right to condition employment on an applicant being required to disclose certain CORI. Except as authorized by M.G.L. c. 6, § 172 and 803 CMR 3.02-3.04, it shall be unlawful to require or request a person to provide a copy of his/her CORI to any third person, agency, organization or corporation pursuant to M.G.L. c. 6, § 172 and violations of such are punishable pursuant to M.G.L. c. 6, §§ 168 and 177-178B.

6.07 Practical Assistance to Correct a CORI:

The CHSB shall post on its website and provide at no cost information concerning the process of correcting a criminal record.

6.08: Complaints of Inaccurate, Incomplete or Misleading CORI

(1) Any person (hereinafter "complainant") who believes that his/her CORI is inaccurate, incomplete or misleading shall submit in writing a request to the agency having custody or control of the record(s) containing the CORI. That written request shall describe with reasonable specificity the inaccurate, incomplete, or misleading CORI, and shall describe the modification necessary to correct the inaccurate, incomplete or misleading CORI.

(2) Any person (hereinafter "complainant") who is denied the right to inspect or copy CORI relating to him/her may, within 30 days of such denial, petition the CHSB for an order requiring the release of such CORI.

(3) If the agency declines to modify or allow access to the record(s) complained of in accordance with the request of the complainant, that complainant may file, in writing, a complaint with the CHSB. Said complaint shall be accompanied by written proof of the

denial of the custodial agency to provide the requested relief, and shall include the following information:

- (a) a description and/or a photocopy of the record(s) containing the inaccurate, incomplete or misleading CORI; and
- (b) a statement describing, with reasonable specificity, what is inaccurate, incomplete or misleading about the CORI contained in the record described in 803 CMR 6.07(2)(a); and
- (c) a statement describing the modification believed by the complainant to be necessary to correct the inaccurate incomplete or misleading CORI or action necessary to access CORI; and
- (d) a description of all steps undertaken by the complainant to access his/her CORI or correct the inaccurate, incomplete or misleading CORI prior to the filing of the complaint with the CHSB.

(4) Upon receipt by the CHSB of a complaint of inaccurate, incomplete or misleading CORI or denial of access to one's CORI, CHSB counsel will review the allegations and information contained therein for compliance with the provisions of 803 CMR 6.07(2) (a) through (d). No complaint shall be deemed received by the CHSB until such complaint is submitted in compliance with the provisions of 803 CMR 6.07(2) (a) through (d).

- (a) Where CHSB counsel determine that all information required by 803 CMR 6.07(2)(a) through (d) has been provided, the complaint shall be referred to the CHSB for disposition.
- (b) Where CHSB counsel determine that all information required by 803 CMR 6.07(2)(a) through (d) has not been provided CHSB counsel will return the complaint to the complainant with a request for additional information as specified.

(5) Following referral by CHSB counsel of a complaint of inaccurate, incomplete, or misleading CORI to the CHSB, the CHSB shall first review the complaint and any supporting documents at a regularly scheduled monthly meeting. That review shall be for the purpose of determining whether a *prima facie* basis for the complaint has been established.

- (a) Where the CHSB determines, after review, that there has been established no *prima facie* basis for the complaint, the complaint shall be dismissed.
- (b) Where the CHSB determines, after review, that there has been established a *prima facie* basis for a complaint, the CHSB shall set a date for hearing, and shall provide written notice to all concerned parties of the notice of the complaint and the date set for hearing.

(6) At its hearing the CHSB or its designees, or a subcommittee consisting of CHSB members or their designees, shall provide all parties an opportunity to:

- (a) have counsel present;
- (b) present evidence or offer testimony;
- (c) present and examine witnesses;
- (d) cross-examine witnesses.

(7) Where a sub-committee of CHSB members or their designees has been selected to hear a complaint of inaccurate, incomplete or misleading CORI, the subcommittee shall present proposed findings of fact to the full CHSB. The CHSB shall review the proposed findings of fact and adopt, reject or modify those findings.

(8) Where the record in question is found by the CHSB to contain inaccurate, incomplete or misleading CORI, the CHSB shall order the record containing such CORI to be properly purged, modified, or supplemented by explanatory notation to correct the inaccurate, incomplete or misleading CORI as required by M.G.L. c.6, § 175.

6.09: Complaints of Improper Dissemination of, or Access to CORI

(1) Any person (hereinafter "complainant") who believes that CORI, juvenile proceedings data, or evaluative information referring to him/her has been unlawfully disseminated or accessed shall submit a complaint in writing to the CHSB. The written complaint as submitted to the CHSB shall contain the following information:

- (a) A reasonably specific description of the nature of the CORI, juvenile proceedings data, or evaluative information improperly disseminated or accessed; and
- (b) A statement identifying the agency and/or individual who the complainant believes has improperly disseminated or accessed his/her CORI, juvenile proceedings data, or evaluative information; and
- (c) A reasonably specific statement describing the circumstances of the improper dissemination of or access to CORI, juvenile proceedings data, or evaluative information, including the period of time within which such alleged violation has occurred; and
- (d) An oath or affirmation, signed by the complainant, that the allegations made in the complaint are in good faith and that they are, to the best of the complainant's knowledge and belief, true.

(2) Upon receipt by the CHSB of a complaint of improper dissemination of or access to CORI, juvenile proceedings data, or evaluative information, CHSB counsel will review the allegations and information contained therein for compliance with the provisions of 803 CMR 6.08(1)(a) through (d).

- (a) Where CHSB counsel determine, following review of the complaint, that all information required by 803 CMR 6.08(1)(a) through (d) has not been provided, CHSB counsel will return the complaint to the complainant with a request for additional information as specified.
- (b) Where CHSB counsel determine, following review of the complaint, that the information required by 803 CMR 6.08(1)(a) through (d) has been provided, an investigation into the complainant's allegations shall commence. Any individual or entity alleged to have improperly disseminated or accessed CORI, juvenile proceedings data, or evaluative information shall be contacted in writing by Board counsel regarding same and shall have 90 days to answer said allegations in writing.
- (c) An individual's or entity's failure to answer allegations in writing within the 90 days required by 803 CMR 6.08(2)(b) may be considered by the CHSB when the CHSB considers whether a *prima facie* basis for the complaint has been established.
- (d) After concluding its investigation into the complainant's allegations, Board counsel shall refer the complaint to the CHSB.

(3) Following CHSB counsel's referral of a complaint of improper dissemination of or access to CORI, juvenile proceedings data, or evaluative information, the CHSB shall review the complaint, any supporting documents, and Board counsel's findings at a regularly

scheduled monthly meeting. That review shall be for the purpose of determining whether a *prima facie* basis for the complaint has been established.

- (a) Where the CHSB determines, after review, that there has been established no *prima facie* basis for a complaint, the complaint shall be dismissed.
 - (b) Where the CHSB determines, after review, that there has been established a *prima facie* basis for a complaint, the CHSB may conduct a public hearing. If such hearing is held, written notice shall be provided to all concerned parties with a summary of the complaint and the hearing date.
- (4) At the hearing, the CHSB, or a designated sub-committee consisting of CHSB members or their designees, shall provide all parties an opportunity to:
- (a) have counsel present;
 - (b) present evidence or offer testimony;
 - (c) present and examine witnesses; and
 - (d) cross-examine witnesses.
- (5) Where a sub-committee of CHSB members or their designees has been selected to hear any complaint of improper dissemination of or access to CORI, juvenile proceedings data, or evaluative information, the sub-committee shall present its proposed findings of fact to the full CHSB. The CHSB shall review the proposed findings of fact and adopt, reject, or modify those findings.
- (6) Where the CHSB finds for the complainant and that CORI, juvenile proceedings data or evaluative information was improperly disseminated or accessed the CHSB may:
- (a) issue orders enforcing the statute, rules and regulations of the CHSB; and/or
 - (b) impose civil fines up to and including \$500.00 for each willful violation; and/or
 - (c) refer the case to the appropriate District Attorney or to the Attorney General for criminal prosecution.

6.10: Circulation of Challenged Records

CORI challenged under the provisions of 803 CMR shall be deemed to be accurate, complete and valid until otherwise ordered by the CHSB.

6.11 Opportunity to Challenge the Accuracy and Relevance of CORI

- (1) Unless otherwise provided by law, agencies certified pursuant to M.G.L. c. 6, §§ 172(b) or 172(c), that are inclined to make an adverse decision based upon receiving CORI, shall before making a final decision, afford the individual with an opportunity to challenge the accuracy or relevance of the CORI. Agencies shall have a written CORI policy that includes at a minimum the following provisions:
- (a) notify the applicant of the potential adverse decision based on the CORI;
 - (b) provide a copy of the CORI to the applicant and the agency's CORI policy;
 - (c) provide a copy of the CHSB's information concerning the process in correcting a criminal record;

- (d) inform the applicant which part of the criminal record appears to make him ineligible;
- (e) provide the applicant with an opportunity to dispute the accuracy and relevance of the CORI;
- (f) upon receipt of additional documentation from the applicant and/or the CHSB, review the information with the applicant and inform him/her of the decision;
- (g) document all steps taken to comply with this section.

(2) The CHSB shall develop and make available a model CORI policy that an agency may use to implement the provisions of paragraph (1).

6.12: CORI Compliance and Audit Requirements

- (1) All forms, authorizations, statements, and the like required by 803 CMR 6.00 shall be maintained by the certified agency holding the CORI and be subject to inspection by the CHSB.
- (2) The CHSB shall prescribe and publish compliance guidelines for agencies certified under M.G.L. c 6, §§ 172(b) or 172(c) and shall conduct periodic audits of certified agencies for compliance with these statutory provisions.
- (3) Agencies or individuals certified under M.G.L. c 6, §§ 172(b) or 172(c) shall be responsible for knowledge of the compliance guidelines.
- (4) The certification of an agency or individual may be subject to revocation or modification as outlined in 803 CMR 3.14.
- (5) The CHSB may impose sanctions under M.G.L. c. 6, §§ 168 and 177 for violations of M.G.L. c. 6, §§ 167-178B.

6.13: Severability

If any provision of 803 CMR 6.00 or the application thereof is held to be invalid, such invalidity shall not affect other provisions or the application of any other part of 803 CMR 6.00 not specifically held invalid, and to this end the provisions of 803 CMR 6.00 and various applications thereof are declared to be severable.

REGULATORY AUTHORITY

803 CMR 6.00: M.G.L. c. 6, §§ 168, 172, 174, 175, Chapter 149 of the Acts of 2004.